

UNITED STATES DISTRICT COURT
DISTRICT OF NEVADA

* * *

GEORGE SWAILS,

Plaintiff,

v.

UNITED STATES OF AMERICA,

Defendant.

2:07-cv-01329-LRH-RJJ
(Base File)

2:07-cv-00864-LRH-RJJ

ORDER

Presently before the court in case number 2:07-cv-01329-LRH-RJJ (“Swails 2”) is a Motion to Dismiss (#7¹) filed by the United States of America. Plaintiff, George Swails (“Swails”), has filed an opposition (#10), and the United States replied (#12). Also before the court is the United States’ Motion for Extension of Time (#2). No response was filed.

The United States filed the present rule 12(b)(5) motion to dismiss for insufficiency of process. The United States argues that Swails has only partially complied with the requirements of effecting proper service on the United States. Specifically, the United States argues that Swails has not served either the United States Attorney for the District of Nevada or the Attorney General of the United States. Swails opposes the motion arguing that he completed service in accordance with Nevada law on the individual defendant named in his state court action.

¹Refers to the court’s docket number.

1 Rule 4(i)(3) of the Federal Rules of Civil Procedure provides as follows:

2 To serve a United States officer or employee sued in an individual capacity for an
3 act or omission occurring in connection with duties performed on the United States'
4 behalf (whether or not the officer or employee is also sued in an official capacity), a
party must serve the United States and also serve the officer or employee under Rule
4(e), (f), or (g).

5 Fed. R. Civ. P. 4(i)(3). Rule 4(i)(4)(B) provides that the court must allow a party reasonable time
6 to cure its failure to "serve the United States under Rule 4(i)(3), if the party has served the United
7 States officer or employee." Fed. R. Civ. P. 4(i)(4)(B).

8 In this case, Swails effectuated service on a United States employee. *See* (Opp'n (#10), Ex.
9 2.) Thus, the court will give Swails sixty (60) days to effectuate service on the United States.

10 IT IS THEREFORE ORDERED that the United States' Motion to Dismiss (#7) is hereby
11 DENIED without prejudice. Swails shall have sixty (60) days to complete service on the United
12 States.

13 IT IS FURTHER ORDERED that the United States' Motion for Extension of Time (#2) is
14 hereby DENIED as moot.

15 IT IS SO ORDERED.

16 DATED this 8th day of September, 2008.



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19 LARRY R. HICKS
20 UNITED STATES DISTRICT JUDGE
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